

United States Department of Agriculture,

OFFICE OF THE SECRETARY.

NOTICE OF JUDGMENT NO. 1306.

(Given pursuant to section 4 of the Food and Drugs Act.)

ALLEGED ADULTERATION AND MISBRANDING OF VANILLA TONKA AND COMPOUND.

On February 23, 1910, the United States Attorney for the Western District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel praying condemnation and forfeiture of three barrels of vanilla and tonka compound in the possession of the Creamery Dairy Co., San Antonio, Tex. The product was labeled: "Vanilla Tonka and Compound—Made by the Hudson Manufacturing Company, Chicago, U. S. A. Guaranteed under the Food and Drugs Act, June 30, 1906."

Analysis of a sample of said product, made by the Bureau of Chemistry of the United States Department of Agriculture, showed the following results: Alcohol by volume, 8.8 per cent; methyl alcohol, absent; vanillin (grams per 100 cc), 0.55; coumarin (grams per 100 cc), 0.09; qualitative test for coumarin, positive; vanilla resins, mere trace, if any; color, caramel. The libel alleged that the product, after shipment by the Hudson Manufacturing Co. from the State of Illinois into the State of Texas, remained in the original unbroken packages and was adulterated and misbranded in violation of the Food and Drugs Act of June 30, 1906, and was therefore liable to seizure for confiscation. Adulteration and misbranding of said product was alleged for the reasons stated in the libel as follows: "That the said barrels do not contain true vanilla tonka and compound as it purports to and as the said barrels are labeled, but said barrels contain, to wit, an imitation extract, and the labeling of said barrels as containing vanilla tonka and compound is misleading and false, so as to deceive and mislead the purchaser, and is a misbranding within said act and so as to offer the contents for sale as said barrels containing vanilla tonka and compound, but same contain an imitation extract consisting of vanillin and tonka, there being a trace, if any, of vanilla and being colored with caramel which is not declared. That said article is an imitation and offered for sale under the distinctive name of another article and is mixed and colored in a

manner whereby the damage and inferiority is concealed, and in such a manner as to reduce, lower, and injuriously affect its quality and strength, and that said product is adulterated."

On May 2, 1910, the Hudson Manufacturing Co. intervened as claimant of the property and filed answer to the libel and on the same date the Creamery Dairy Co. filed a petition in the case, stating that it purchased the product from the Hudson Manufacturing Co., and consenting and agreeing that said company might appear as the sole owner and claimant thereof, and that, in the event of a decree of restitution of the property, that it might be released to said Hudson Manufacturing Co. as the sole owner; and on the same date the Creamery Dairy Co. filed an answer to the petition, praying that the case be dismissed as to them. The cause coming on to be heard on January 11, 1911, and the court having heard the testimony of the witnesses for the Government entered, on January 14, 1911, the following decree: "This cause coming on to be heard this the 11th day of January, A. D. 1911, the parties hereto appeared in open Court by their counsel and announced ready for trial, and a jury being waived the matters of law and fact were submitted to the Court without a jury; and the United States of America, Libellant, having introduced and closed its evidence and the Court finding therefrom that the three barrels charged to be Vanilla Tonka and Compound, seized and libelled herein were not transported or shipped for sale, but were shipped for the purpose of being used by the Creamery Dairy Co. in the manufacture of ice cream and purchased and held by it for that purpose, and the United States of America, Libellant, having failed to introduce any evidence showing that the Secretary of Agriculture had caused notices to be given to the party from whom the sample was obtained and given him an opportunity to be heard as prescribed in Section IV of the Act of Congress of June 30, 1906, regulating such proceedings; and the Court being of opinion as a matter of law that the property libelled herein cannot be condemned because it was not transported for sale as above indicated, and being also of the opinion as a matter of law that the proceedings against property in such a case can in no event be had without the notices referred to having been given by the Secretary of Agriculture and an opportunity for a hearing allowed, as provided by said Act, is of the opinion that it is unnecessary to consume further time of the Court in hearing the defendants' evidence; It is, therefore, ordered, adjudged and decreed that the United States of America, Libellant herein, take nothing by this its suit and that the libel proceedings herein be dismissed. To which action and judgment of the Court, Libellant, United States Government, in open Court excepted and gave notice of appeal, and by consent of parties is allowed six months

from date hereof to perfect its appeal herein; and it is therefore hereby ordered by the Court that the Libellant, United States of America, is allowed and given six months from date hereof in which to perfect its appeal herein." Pursuant to notice, libellant appealed said case to the United States Circuit Court of Appeals for the Fifth Circuit, where said case is now pending.

On January 14, 1911, the court entered an order in compliance with application of the Hudson Manufacturing Co. previously filed, directing the release of the product to said company upon the payment of the costs by said company and the execution by it of a good and sufficient bond in the sum of \$700, conditioned that said property should not be again sold contrary to law.

JAMES WILSON,
Secretary of Agriculture.

WASHINGTON, D. C., *January 22, 1912.*